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January 8, 2016

**VIA ECF FILING**

Honorable Charles R. Breyer  
United States District Judge  
Courtroom 6, 7th Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102

**Application of Alexander Schmidt for Appointment to the  
Plaintiffs' Steering Committee or, Alternatively, to  
Represent Plaintiffs Suing Robert Bosch GmbH**

***In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litig.,  
15-MD-2672-CRB (JSC)***

Dear Judge Breyer:

I am a member of Wolf Haldenstein Adler Freeman & Herz LLP, a 37-lawyer firm that has represented plaintiffs in class actions nationwide for 45 years, recovering several billion dollars for clients, shareholders and consumers. The firm's website is [www.whafh.com](http://www.whafh.com). A resume of my and my team's leadership experience in MDLs and class actions, including other consumer fraud, false advertising and automotive liability matters, appears at Attachment A.

In this case, we represent 17 individual vehicle owners and an automobile leasing company for whom collectively we filed seven lawsuits between September 22 and November 30, 2015.<sup>1</sup> We respectfully submit that our contributions to and advancement of the plaintiffs' interests in this case distinguishes us and will enable us to add unique value to the PSC. Specifically, we have been at the forefront of investigating Robert Bosch GmbH ("Bosch"), the

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<sup>1</sup> *Minkina v. Volkswagen of America, Inc.*, No. 3:15-cv-06170-CRB; *Williams v. Volkswagen of America, Inc.*, No. 3:15-cv-06174-CRB; *Cua v. Volkswagen of America, Inc.*, No. 3:15-cv-06298-CRB (Bosch RICO case); *Lefkowitz v. Volkswagen of America, Inc.*, No. 3:15-cv-06308-CRB (Bosch RICO case); *G.T. Leasing, Inc. v. Volkswagen of America, Inc.*, No. 3:15-cv-06269-CRB (Bosch RICO case); *Eslick v. Volkswagen of America, Inc.*, No. 3:15-cv-06210-CRB (Bosch RICO case); and *Redmond v. Volkswagen of America, Inc.*, No. 3:15-cv-05657-CRB (Bosch RICO case).

German company that supplied the “defeat device” to Volkswagen AG, and we have developed facts sufficient to allege that Bosch *knowingly* enabled the Volkswagen/Audi defendants to perpetuate the diesel emissions fraud. Our clients filed the first case (and five others) alleging, among other things, that Bosch advised Volkswagen in 2007, a year before the fraud began, that its technology could be used illegally to evade emissions standards;<sup>2</sup> that Bosch had to know under the circumstances that Volkswagen’s intended use was to deceive customers and regulators in the U.S. and elsewhere;<sup>3</sup> and that instead of preventing the fraud, Bosch chose to profit from it by selling Volkswagen AG 11 million production units of its defeat device. Under these facts, Bosch is both jointly liable with the Volkswagen defendants under civil RICO and subject to this Court’s jurisdiction.<sup>4</sup> After our clients sued Bosch, it was reported that both the DOJ and German authorities are investigating Bosch’s role in the emissions scandal.<sup>5</sup>

Bosch’s presence as a defendant and at the settlement table is critical to securing a full and fair recovery for the class. When its exposure to the EPA was believed to be \$18 billion, analysts estimated Volkswagen’s liabilities worldwide to be \$40 billion.<sup>6</sup> The EPA has now alone sued for more than that sum,<sup>7</sup> making Volkswagen’s total exposure in excess of \$80 billion. To date, Volkswagen has been reported to have reserved only \$7.3 billion and borrowed \$21 billion to cover its anticipated liabilities.<sup>8</sup> Despite its size, the threat to Volkswagen’s solvency is real and will likely put downward pressure on the settlement value of this case, jeopardizing the class’s ability to obtain a just result.<sup>9</sup> Bosch’s rightful presence will alleviate

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<sup>2</sup> “Reports: Volkswagen was warned about illegal emissions tricks years ago,” U.S. NEWS & WORLD REPORT, Sept. 27, 2015, available at [www.usnews.com/news/business/articles/2015/09/27/reports-vw-warned-about-illegal-emissions-tricks-year-ago](http://www.usnews.com/news/business/articles/2015/09/27/reports-vw-warned-about-illegal-emissions-tricks-year-ago).

<sup>3</sup> M. Taylor, “EPA Investigating Bosch over VW Diesel Cheater Software,” CAR AND DRIVER, Nov. 23, 2015, available at [blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software/](http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software/).

<sup>4</sup> See, e.g., *Mitsui O.S.K. Lines, Ltd. v. SeaMaster Logistics, Inc.*, 618 Fed. Appx. 304, 307 (9th Cir. 2015); *Lightfoot v. Cendant Mortg. Corp.*, 769 F.3d 681, 689 (9th Cir. 2014); *U.S. v. Chao Fan Xu*, 706 F.3d 965 (2013); *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir.) (all citations omitted).

<sup>5</sup> J. Schectman, “Exclusive: U.S. probes Bosch in VW cheating scandal – sources,” REUTERS, Nov. 19, 2015, available at [www.reuters.com/article/us-volkswagen-emissions-probe-exclusive-idUSKCN0T82Q320151119](http://www.reuters.com/article/us-volkswagen-emissions-probe-exclusive-idUSKCN0T82Q320151119); W. Boston, U. Dauer, “Auto-Parts Supplier Robert Bosch Probed Amid Emissions Scandal,” THE WALL STREET JOURNAL, Dec. 16, 2015, available at [www.wsj.com/articles/auto-parts-supplier-robert-bosch-probed-amid-emissions-scandal-1450264797](http://www.wsj.com/articles/auto-parts-supplier-robert-bosch-probed-amid-emissions-scandal-1450264797).

<sup>6</sup> “VW scandal could cost company \$80 billion,” CHATTANOOGA TIMES FREE PRESS, Oct. 6, 2015, available at [www.timesfreepress.com/news/business/aroundregion/story/2015/oct/06/volkswagen-costs-scandal-will-be-piling/328956/](http://www.timesfreepress.com/news/business/aroundregion/story/2015/oct/06/volkswagen-costs-scandal-will-be-piling/328956/).

<sup>7</sup> J. Plungis, A. Katz, D. Welch, “Tough Stance by U.S. Regulators Deepens VW’s Diesel Crisis,” BLOOMBERG BUSINESS, Jan. 6, 2016, available at [www.bloomberg.com/news/articles/2016-01-06/tough-stance-by-u-s-regulators-deepens-vw-s-dirty-diesel-crisis](http://www.bloomberg.com/news/articles/2016-01-06/tough-stance-by-u-s-regulators-deepens-vw-s-dirty-diesel-crisis).

<sup>8</sup> See D. Levin, “As VW scandal widens, automaker sets aside \$7 billion to cover costs,” FORTUNE, Sept. 22, 2015, available at [fortune.com/2015/09/22/vw-emissions-scandal-costs/](http://fortune.com/2015/09/22/vw-emissions-scandal-costs/); A. Scheutze, A. Cremer, “VW agrees on terms of 20 billion euro bridge loan: sources,” REUTERS, Dec. 2, 2015, available at [www.reuters.com/article/us-volkswagen-emissions-banks-idUSKBN0TL0SW20151202](http://www.reuters.com/article/us-volkswagen-emissions-banks-idUSKBN0TL0SW20151202).

<sup>9</sup> J. Edwards, G. Prodhan, “VW faces billions in fines as U.S. sues for environmental violations,” REUTERS, Jan. 5, 2016, available at [www.reuters.com/article/volkswagen-emissions-idUSL1N14P1HH20160105](http://www.reuters.com/article/volkswagen-emissions-idUSL1N14P1HH20160105).

that pressure and enhance the parties' and Court's ability to resolve the case. Importantly, it will also deter foreign actors from facilitating future frauds against American citizens.

Wolf Haldenstein has been the leading force in recognizing the viability and importance of suing Bosch, and I should be appointed to the PSC to continue that effort. Working with other firms whose clients have sued Bosch, we have initiated the process of serving Bosch through the Hague Convention. Our central office and most of our lawyers on the case are located in New York City, the most convenient and inexpensive U.S. city from which to travel to Germany for discovery purposes. Our innovative thinking, high quality work-product and vigor in pursuit of the class's interests in this case make us both deserving and well-suited for appointment to the PSC, or as lead RICO counsel should the Court be inclined to designate someone for that role. My firm has in past cases devoted millions of dollars towards the prosecution of a matter and is committed to doing so here. My team and I are ready and able to dedicate ourselves to this case.

My application is supported by 22 firms, including lead counsel in the securities actions, several of the country's preeminent class action, consumer protection and automotive liability litigation practices, and every traditional plaintiffs' firm whose clients sued Bosch,<sup>10</sup> some of which are part of the Group that is working actively with us to pursue Bosch. *See* Attachment B.

That level of support testifies to my willingness and ability to work cooperatively with other plaintiffs' counsel. In this matter, I worked closely with the interim co-lead counsel appointed by Judge Linares in the New Jersey cases on a preservation order and other matters. I also worked with them and interim co-lead counsel in the Eastern District of Michigan cases to ensure that class members would not waive rights by participating in Volkswagen's "goodwill program" offering two \$500 debit cards to class members. At their request, I drafted the original version of the stipulated order that Chief Judge Rosen ultimately entered pertaining to that program. Having spent the first 20 years of my 30-year career representing defendants as well as plaintiffs, including six years at the firm now called Proskauer and 4.5 years at my own firm before joining Wolf Haldenstein in 1999, I work well with defense counsel and have developed a reputation as a skilled and reasonable advocate who cuts to the chase and whose word is good. Consequently, I have been able to settle what many thought were intractable disputes, most recently the \$173,000,000 "Stuyvesant Town" settlement noted in our resume.

My judicial references are: as to my work on a RICO matter, the Honorable Jed S. Rakoff (S.D.N.Y.) (212-805-0401), and as to leadership in a complex class action, the Honorable Richard B. Lowe III, Presiding Justice, Appellate Term, First Department, N.Y. Co. Sup. Ct. (646-386-3259). In this district, I have appeared several times before the Honorable Yvonne Gonzalez Rogers (510-637-4010) in a complex antitrust aftermarket monopolization case in which my firm is lead counsel, *In re: Apple iPhone Antitrust Litig.*, 4:11-cv-06714-YGR. Thank you for considering my application.

Respectfully submitted,

*Alexander H. Schmidt*

cc: All Counsel of Record

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<sup>10</sup> Eimer Stahl, LLP, which sued Bosch for clients in Illinois, has no objection to our application.

A

## Wolf Haldenstein Adler Freeman & Herz LLP

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### Alexander H. Schmidt

**Overview: Partner, New York.** Has practiced sophisticated commercial litigation with or against leading national law firms for 30 years, the last 10 concentrating on plaintiff-side class actions. Focus areas include consumer protection, false advertising, antitrust and civil RICO. Creative problem solver who has won difficult, groundbreaking cases and settled seemingly intractable disputes. Cost-effective, client-oriented advocate. Small Claims Arbitrator, New York City Civil Court (1994-2008). Assistant Adjunct Professor of Law, federal discovery, Brooklyn Law School (1998-1999).



**Notable Cases:** *Roberts v. Tishman Speyer Properties, L.P.* Lead lawyer in landmark tenants' class action involving Stuyvesant Town/Peter Cooper Village apartment complex in Manhattan. Achieved \$173,000,000 settlement for 20,000-tenant class in 2013, the largest-ever tenant class recovery in the U.S., ultimately without objection and only five opt-outs. Congresswoman Carolyn Maloney reported that the 2009 New York Court of Appeals victory reversing a 13-year state housing agency practice permitting landlords to deregulate tax-benefited rent-stabilized units "shook the halls of Congress." The case is featured in Charles V. Bagli's book, *Other People's Money: Inside the Housing Crisis and the Demise of the Greatest Real Estate Deal Ever Made*.

**General Motors Ignition Switch Defect Litigation.** Co-counsel to several "Identified Parties" appointed to appear before the bankruptcy court. Will be one of three plaintiffs' counsel to argue before the Second Circuit this Spring seeking reversal of a bankruptcy court order enjoining all pre-GM bankruptcy MDL cases.

**In re: Long Island Power Authority Hurricane Sandy Litig.** Co-lead counsel in breach of contract class action against utility that failed to protect customers from storm damage. Recently sustained class allegations on appeal. *See* 2015 N.Y. App. Div. LEXIS 9692 (N.Y. App. Div. 2d Dep't Dec. 30, 2015).

**Roberts v. AT&T Mobility LLC**, N.D. Cal. No. 3:15-cv-3418-EMC. Architect of First Amendment challenge to AT&T's arbitration clause in consumer fraud class action involving AT&T's limiting data usage by customers with "Unlimited Data" plans. Mr. Schmidt's article, "Challenging the Supreme Court's *American Express* Decision Under the First Amendment Petition Clause," appeared in *Antitrust* magazine (ABA, Summer 2014).

### Janine L. Pollack

**Overview: Partner, New York.** False advertising and consumer protection specialist and University of Pennsylvania Law School alumnus with many successful class action prosecutions over 25-year career. Co-chair of Women's Initiative of the National Association of Shareholder & Consumer Attorneys (NASCAT). Frequent public speaker on consumer fraud and other topics. Named New York Super Lawyer 2012- 2015.



**Notable Cases:** Lead or co-lead counsel in several false advertising actions: *In re Skechers Toning Shoes Product Liability Litig.* (*Grabowski*) (W.D. Ky.) (secured \$45 million settlement); *In re Reebok EasyTone Litig.* (D. Mass.) (\$28.5 million settlement); *Bezdek v. Vibram USA Inc.* (D. Mass.) (\$3.75 million settlement); *Rosales v. FitFlop USA, Inc.* (S.D. Ca.) (\$5.3 million settlement); *Halberstam v. NJOY, Inc.* (C.D. Ca.). Won jury trial against R.J. Reynolds in a wrongful death tobacco case, *In re: Engle Progeny Cases Tobacco Litig.* (*Hiott*), (4th Jud. Cir. Fla).

## Wolf Haldenstein Adler Freeman &amp; Herz LLP

## Malcolm Brown

**Overview: Partner, New York.** More than 20 years' experience in sophisticated class action, commercial and shareholder litigation. Anchor member of Firm's automotive liability class action litigation team.

**Notable Cases:** Argued *Thomas v. Ford Motor Co.*, 2014 U.S. Dist. LEXIS 43268 (D.S.C. Mar. 31, 2014) (denying Ford's motion to dismiss class action complaint). Co-chairs Firm's executive committee seat in *Ford Unintended Acceleration Litig.* (S.D. W. Va.). Served as co-lead counsel in *New Jersey Laborers Pension Fund v. TRW Automotive Holdings Corp.* (Mich. Cir. Ct.), *In re Lender Processing Services, Inc. Shareholder Litig.* (Fla. Cir. Ct.), *Trustees of the Police and Fire Retirement System of the City of Detroit v. Clapp, et al.* (S.D.N.Y.).



## Michael Jaffe

**Overview: Partner, New York.** Berkeley (1982) and Hastings College of the Law (1987) graduate who has practiced plaintiffs' class action litigation for 28 years. An ERISA and securities law expert, also manages the Firm's automotive liability practice. Adjunct professor at CUNY Law School for Mortgages and Secured Transactions (2000-2006). Pro bono work includes political asylum cases for the Lawyers Committee for Human Rights.



**Notable Cases:** Co-chair Firm executive committee seat, *Ford Unintended Acceleration Litig.* (S.D. W. Va.). Serves as co-lead counsel in *Lehman ERISA Litig.* (S.D.N.Y.), *Amgen ERISA Litig.* (C.D. Cal.) and *Five Pawns Consumer Litig.* (C.D. Cal.).

## Rachele R. Rickert

**Overview: Partner, San Diego.** California native and Hastings College of the Law (1997) alumnus who has practiced corporate derivative and class action litigation including securities, consumer, antitrust, employment and general corporate litigation for 15 years. Author of "Class Actions: There Is No Reason To Fix What Isn't Broken," San Diego ABTL Report, Vol. XIV, No. 3, Summer 2007, a counter-point article discussing class action reform in California.



**Notable Cases:** *Ardon v. City of Los Angeles*, 52 Cal. 4th 241(2011) and *McWilliams v. City of Long Beach*, 56 Cal. 4th 613 (2013), in which the California Supreme Court unanimously held, respectively, that class claims for refunds of City of Los Angeles telephone users taxes are permitted under California Government Code § 910 and local ordinances are not "statutes" under the Government Claims Act, which applies to local tax refunds. *Lambert v. Baker Tilly Hong Kong Ltd.*, No. CV 14-09959-CBM (MANx) (C.D. Cal.) (lead counsel in securities class action); *In re Integrated Silicon Solution, Inc. Stockholder Litig.*, No. 115CV278812, Santa Clara Sup. Ct. (co-lead counsel; obtained a preliminary injunction enjoining merger); *In re VeriSign, Inc. Deriv. Litig.*, No. C-06-4165-PJH (N.D. Cal.) (co-lead counsel in shareholder derivative case alleging improper backdating of stock options); *In re Western Digital Corp. Deriv. Litig.*, No. SACV 06-729-ODW (RNBx) (C.D. Cal.)(same); *In re Applied Micro Circuits Corp. Deriv. Litig.*, No. 5:06-cv-04269 JW (N.D. Cal.)(same).

**B**

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Baum, Hedlund, Aristei & Goldman has represented thousands of plaintiffs in complex product liability and consumer fraud cases across the nation. Its attorneys have successfully litigated automotive defects, aviation disasters, and pharmaceutical/medical device defects against major U.S. and international manufacturers. Baum Hedlund has also successfully briefed and argued at the trial and appellate levels, in state and federal courts, preemption and *forum non conveniens* motions in aviation, drug and medical device product cases as well as other issues that VW and Bosch can be expected to raise.

*O'Brien v. Volkswagen Group of America, Inc.*, 3:15-cv-06162-CRB

2) Eric J. Artrip

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A civil litigation and transactional firm with a focus on prosecuting class actions, mass torts and other injury claims. The firm filed the first class action against Volkswagen in Alabama (the second nationwide), the first action in Tennessee and was one of the few firms to sue Robert Bosch GmbH as a RICO conspirator with Volkswagen.

*Crook v. Volkswagen Group of America, Inc.*, 3:15-cv-05932-CRB

*Garcia v. Volkswagen Group of America, Inc.*, 3:15-cv-05884-CRB

*Henderson v. Volkswagen Group of America, Inc.*, 3:15-cv-05788-CRB

*Redmond v. Volkswagen Group of America, Inc.*, 3:15-cv-05657-CRB

*Shirley v. Volkswagen Group of America, Inc.*, 3:15-cv-05883-CRB

*Wallace v. Volkswagen Group of America, Inc.*, 3:15-cv-05920-CRB

*Williams v. Volkswagen Group of America, Inc.*, 3:15-cv-06174-CRB

*Wood v. Volkswagen Group of America, Inc.*, 3:15-cv-05876-CRB

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Quinn, Connor, Weaver, Davies & Rouco is a litigation firm with offices in Birmingham, Alabama and Atlanta, Georgia that primarily represents consumers employees and labor organizations. The firm has represented clients in RICO litigation both on the plaintiff and defense side. Mr. Rouco has participated in multidistrict litigation alleging RICO claims against insurance brokers (*In Re Insurance Brokerage Antitrust Litig.*, 618 F. 3d 300 (3rd Cir. 2010)) and insurance companies (*In Re Managed Care Litig.*, 135 F. Supp. 2d 1253 (S.D. Fla. 2001)). Mr. Rouco has also represented consumers in litigation against automotive companies involving design defects. Mr. Davies served as a Co-Chair of the Antitrust, RICO and Labor Law Committee of the American Bar Association's Labor and Employment Law Section and is a contributing editor to *Developing Labor Law* (4th ed.), having contributed to the drafting of Chapter 30, "RICO and Labor Law."

Quinn, Connor, Weaver, Davies & Rouco is co-counsel with Mastando & Artrip on the *Wood*, *Wallace*, and *Williams* cases.

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The Wilner Firm is uniquely qualified to litigate technical automotive issues. Mr. Wilner is a Yale cum laude Physics major graduate with M.S. in Engineering whose prominent automotive cases have involved materials failures, vehicle handling, stability and control, crashworthiness, electrical and brake failures and tire defects. He has lectured attorneys and judges on scientific aspects of vehicle crashes, Newtonian dynamics and automotive design and achieved wide acclaim for his successful campaign against the tobacco industry. Mr. Lantinberg, is an honors graduate of the University of Florida College of Law who has represented individuals and businesses against insurance companies, in class actions and in other sophisticated business and tort litigation. He was named a Florida Super Lawyer in 2008 and 2009, a distinction achieved by only five percent of the state's lawyers.

The Wilner Firm is co-counsel to Wolf Haldenstein in each of its cases.